

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish
Consumer Rights and Consumer Protection Rules
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING FINDING
DISABILITY RIGHTS ADVOCATES
ELIGIBLE TO CLAIM INTERVENOR COMPENSATION**

This ruling finds Disability Rights Advocates (DRA) eligible for an award of intervenor compensation pursuant to Public Utilities Code Section 1801 *et seq.*

Intervenor Compensation Requirements

The intervenor compensation program set forth in Section 1801 *et seq.*¹ allows public utility customers to receive compensation for their participation in Commission proceedings. To receive an award, a customer must make a substantial contribution to the adoption of the Commission's order or decision and demonstrate that participation without an award would impose a significant financial hardship.²

Section 1804 requires a customer who intends to seek an award to file and serve within 30 days after the prehearing conference a notice of intent to claim

¹ All references are to the Public Utilities Code.

² Section 1803.

compensation (NOI). Section 1804(a) and the Commission's Rules of Practice and Procedure, Rule 76.74, allow the Administrative Law Judge (ALJ) to establish a deadline for filing NOIs when no prehearing conference is scheduled. The NOI must include a statement of the nature and extent of the customer's planned participation, and an itemized estimate of the compensation the customer expects to request. The customer's showing of significant financial hardship may be included with the NOI or may be included with the request for award after the Commission's final decision in the proceeding.

If the NOI includes the customer's financial hardship showing, the ALJ in consultation with the Assigned Commissioner must issue within 30 days a preliminary ruling addressing whether the customer will be eligible for an award under the intervenor compensation program.³ To determine eligibility, two questions must be addressed: whether the intervenor is a "customer" as defined in Section 1802(b), and whether participation will present a significant financial hardship.⁴ The ALJ's ruling should also identify which type of customer the intervenor is: a participant representing consumers; a representative authorized by a customer; or a representative of a group or organization authorized by its bylaws or articles of incorporation to represent the interests of residential customers. A finding of significant financial hardship creates a rebuttable presumption of eligibility in other Commission proceedings commencing within one year of the date of that finding.

³ Section 1804(b)(1).

⁴ Decision (D.) 98-04-059.

The Proceeding

This rulemaking proceeding began on February 3, 2000. On May 27, 2004 the Commission issued D.04-05-057, *Interim Decision Issuing General Order 168, Rules Governing Telecommunications Consumer Protection*. Following appeals, the Commission on October 7, 2004 issued D.04-10-013, *Order Modifying and Denying Applications for Rehearing of Decision 04-05-05*. On January 27, 2005, the Commission issued D.05-01-058 staying D.04-05-057 pending further examination of whether General Order 168 provided a consumer protection structure that could be reasonably implemented, adequately enforced, and viable in the longer term.⁵

On April 6, 2005 Assigned Commissioner Susan Kennedy held a prehearing conference to begin the re-examination process ordered in D.05-01-058.⁶

DRA's NOI

Because no prehearing conference was held in the initial phase leading to D.04-05-057 and D.04-10-013, the ALJ's May 19, 2000 ruling established September 14, 2000 as the NOI filing deadline. DRA filed its NOI on May 6, 2005, 30 days after the prehearing conference that began this phase of the proceeding. No party could have anticipated the current phase of the proceeding or been expected to file an NOI covering it by the initial deadline, so

⁵ D.05-01-058, page 1.

⁶ This has been informally referred to by some participants as the "evidentiary phase" of the rulemaking, although no firm determination has yet been made to hold evidentiary hearings.

it is reasonable to treat April 6, 2005 as the prehearing conference date that began the 30-day NOI filing period anticipated by § 1804(a)(1) for this phase. DRA's NOI was timely.

DRA's articles of incorporation filed recently in another proceeding⁷ indicate that it is a 501(c)(3) organization established to engage in public interest litigation and advocacy to protect the rights of people with disabilities. It describes itself as "the only intervenor representing the specific interest of disabled customers, a group that will be greatly affected by the results of a proceeding determining which protections afforded by the Consumer Bill of Rights... should remain in place."

DRA has included a statement of the nature and extent of its planned participation (Section 1804(a)(2)(A)(i)), and an itemized estimate of the compensation it expects to request (Section 1804(a)(2)(A)(ii)). The position DRA intends to advocate falls within the scope of this phase of the proceeding.

DRA's itemized estimate indicates that it devoted approximately 100 hours during 2003 preparing a motion to intervene and late-file comments on the Assigned Commissioner's Draft Decision and Proposed General Order that preceded D.04-05-057. It estimates it plans to request \$21,822.50 in compensation for that work on the earlier phase of this proceeding. The NOI did not provide a detailed estimate of DRA's anticipated work in the current phase, but DRA

⁷ R.04-12-001, *Order Instituting Rulemaking into Implementation of Federal Communications Commission Report and Order 04-87, as It Affects the Universal Lifeline Telephone Service Program*.

responded to the ALJ's later request and provided a breakdown totaling 285 hours and \$76,475.⁸

DRA enjoys a rebuttable presumption of eligibility to claim compensation in this proceeding by virtue of having recently received a finding of significant financial hardship as a customer of the third type, *i.e.*, a formally organized group authorized pursuant to its articles of incorporation to represent the views of residential customers. That presumption arose from an ALJ's finding on March 8, 2005 in a ruling in R.04-12-001. This phase of R.00-02-004 began within one year of that finding.

Section 1804(b)(2) provides the ALJ's ruling may address "issues raised by the notice of intent to claim compensation. The ruling may point out... unrealistic expectations for compensation, and any other matter that may affect the customer's ultimate claim for compensation." In this case, I foresee two potential issues. First, both the record in this proceeding and D.04-05-057 show that the motion to late-file comments (not a motion to intervene), with comments attached, filed in 2003 to which DRA apparently refers was not filed on DRA's behalf, but on behalf of the California Foundation for Independent Living Centers, said to be a nonprofit organization composed of more than two dozen independent living centers statewide, *represented by* DRA.⁹ That distinction may or may not make a difference in a later request for compensation, but DRA should be careful in its future filings to state the exact legal name of the entity

⁸ As corrected by the ALJ for arithmetic errors.

⁹ *Motion of California Foundation for Independent Living Centers Seeking Permission to Late-File Comments (Late-Filed Comments Attached)*, filed December 17, 2003; and D.04-05-057, page 128, granting the motion and accepting the comments.

sponsoring its filings. The entity examined and found eligible in this ruling to claim intervenor compensation will be, as the NOI requests, DRA, not the California Foundation for Independent Living Centers that sponsored the 2003 comments. Second, this ruling will find DRA eligible for an award of compensation in the current phase of R.00-02-004, not the earlier phase that led to D.04-05-057 and D.04-10-013.¹⁰ I anticipate the Commission would require exceptional justification before it would approve a DRA claim for compensation for work on the earlier, long-completed phase, particularly considering that DRA was at the time neither a party nor an intervenor ruled eligible to seek compensation. Thus, DRA's NOI may convey, in the words of Section 1804(b)(2), an unrealistic expectation for compensation.

No party has indicated opposition to DRA's NOI. After consulting with the assigned Commissioner, I find that DRA has met the NOI filing requirements of Section 1804(a) and should be eligible for an award under the intervenor compensation program. This finding of eligibility to claim compensation in no way assures DRA will subsequently receive an award. The determination of what compensation, if any, DRA should be granted will come only when DRA has filed its request pursuant to Section 1804(c) after the issuance of the final order in this proceeding.

IT IS RULED that:

1. DRA has filed a timely notice of intent to claim compensation which meets the applicable requirements under Public Utilities Code Section 1804(a).

¹⁰ Parties previously ruled eligible in the earlier phase, however, continue to be eligible in this phase.

2. DRA is eligible to claim intervenor compensation in the current phase of R.00-02-004 by virtue of having received a finding of significant financial hardship within one year of January 27, 2005, the date D.05-01-058 staying D.04-05-057 was issued opening this re-examination phase of the proceeding. This finding of eligibility in no way assures DRA will be awarded compensation. The determination of what compensation, if any, DRA should be granted will come only when it has filed a request pursuant to Public Utilities Code Section 1804(c) after the issuance of the final order in this proceeding.

Dated June 22, 2005, at San Francisco, California.

/s/ JAMES C. MCVICAR

James C. McVicar
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Finding Disability Rights Advocates Eligible to Claim Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated June 22, 2005, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.